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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190255

DATE: December 21, 1977

MATTER OF: Red Ball Transfer & Storage

DIGEST:

1. Question of small business concern's responsibility and determination by SBA not to issue Certificate of Competency, is not for consideration by GAO because conclusive authority over question is vested by statute in SBA.
2. Even assuming validity of protester's allegation that under a prior Government contract with successful bidder parties conspired to disregard maximum order limitation, GAO cannot conclude from this fact alone that rejection of firm as nonresponsible is required or that procuring officials fraudulently have determined the prior contractor to be responsible for purposes of this procurement.
3. Protest concerning postponement of bid opening and acceptance of bid submitted after original time set for bid opening is untimely and not for consideration on the merits because protest was filed more than 10 days after protester was present when original bid opening was postponed and observed circumstances for questioning propriety of postponement.

Red Ball Transfer & Storage (Red Ball) protests the award of a contract to Redman Westlake Moving & Storage System (Westlake) under IFB GS-90T-101, issued by the General Services Administration (GSA). Red Ball has presented several grounds for protest which are discussed below.

Red Ball states that the Small Business Administration (SBA) improperly declined to issue Red Ball a Certificate of Competency (COC) by failing to give weight to all relevant information regarding its financial status. In this regard, Red Ball states that in its negative determination concerning Red Ball's responsibility, GSA and, upon review, SBA were persuaded by the firm's receivership status. Although SBA declined to issue a COC to Red Ball on September 19,

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1977, Red Ball states that as of July 18, 1977 it was not in receivership. The protester argues that both GSA's determination of non-responsibility and the denial of a COC by SBA were made without sufficient weight given more current financial information presented for consideration.

Under 15 U.S.C. § 637(b)(7) (1970), as amended by Pub. L. No. 95-89, § 501, 91 Stat. 553, the SBA has authority to conclusively determine all elements of responsibility. Accordingly, our Office does not review SBA determinations or require the SBA to issue a COC even if we disagree with SBA's judgment. Ikard Manufacturing Co., B-190053, November 1, 1977, 77-2 CPD __. Although in appropriate cases we have taken the initiative to insure that information vital to a responsibility determination is evaluated, such action is not required here because the protester's disagreement lies with the judgment reached by SBA after evaluating the capabilities and facts asserted by the protester. See Gallery Industries, Inc. - Request for Reconsideration, B-185963, June 16, 1976, 76-1 CPD 383.

Red Ball also disputes the propriety of an award in the instant case because of alleged improper contract administration under a prior contract with Westlake. Red Ball contends that Westlake collusively agreed with GSA on a prior contract to disregard the maximum order limitation in that contract. In light of this alleged past practice, Red Ball questions Westlake's responsibility for the instant procurement.

We recognize that a bidder's record of integrity is an essential element of the standards required of responsible prospective contractors. Even assuming the Government and Westlake did not comply with the maximum order limitation under a prior contract, we could not conclude from this fact alone that performance in excess of a maximum order limitation, of itself, requires the rejection of such firm as nonresponsible for subsequent procurements or that procuring officials fraudulently determined the prior contractor to be responsible for this procurement.

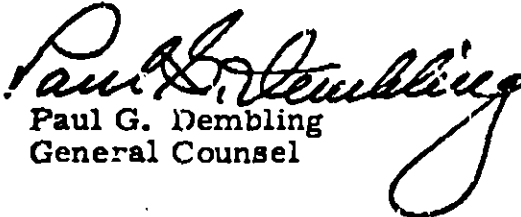
Finally, Red Ball asserts that GSA improperly postponed the bid opening. Red Ball argues that the original bid opening time should prevail and that Westlake's bid should be considered late because it was not received before the original bid opening.

In this connection we initially note that Red Ball's bid for this procurement was low notwithstanding the postponement and the firm was rejected as nonresponsible by appropriate authority.

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Furthermore, section 20.2(b)(2) of our Bid Protest Procedures provides in pertinent part that, "* * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." Red Ball was informed on September 23, 1977, that the firm had not received an award and asserts that its protest to our Office dated September 26, 1977, was timely filed. However, the essential basis underlying Red Ball's protest concerns the legality of the postponement of the bid opening by GSA on August 5, 1977. Because Red Ball was present when the original bid opening was postponed on August 5, 1977, and observed the circumstances for questioning the postponement, its protest as to the legality of the agency's action is untimely filed and will not be considered on the merits. The subordinate question as to the lateness of Westlake's bid, accordingly, must be dismissed.

For the foregoing reasons, the protest is dismissed.


Paul G. Dembling
General Counsel